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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,085	01/09/2002	Paul H. Richardson	1001-12	6178

7590

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,085

Applicant(s)

RICHARDSON, PAUL H.

Examiner

C. SAYALA

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-59 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102/Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5, 7-9, 15-20, 40-43, 47-48, 52-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fielding et al (US 5206049).

Fielding et al. teach a choline containing capsule encapsulated by a lipid coating and mixed with compositions that are moist. See col. 3, lines 40-50, claim 7 and 9, col 4, lines 1-20. The limitations of claims 3-5 or 41-43, must be inherent since the same composition is mixed with compositions are moist. The same may be said about claims 15-16. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior

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art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

"[I]t is elementary that the mere recitation of a newly discovered function or property, inherently possessed by things in the prior art, does not cause a claim drawn to those things to distinguish over the prior art. Additionally, where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on."

In re Best, 195 USPQ 431-434, (CCPA 1977): "Where, as here, the claimed and prior art products are identical or substantially identical, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. Whether the rejection is based on 'inherency' or 'prima facie obviousness' under 35 USC 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products and obtain and compare prior art products."

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2. Claims 1-20 and 40-59 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Klose (US patent 5190775).

Klose teaches a choline-containing core, encapsulated with hydrogenated vegetable oils which is mixed with beeswax. See col 2, lines 60-70, col 3, lines 48-49, col 4, lines 25-35, col 5 lines, 25-50, example 1 and claims. Note the additions of surfactants at col 5, lines 55+. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

3. Claims 1-13, 15-20, 40-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over King et al., (US Patent 5807594).

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See col 4, lines 29-40, col 3, lines 43+, claims, col. 5, lines 40-49. A choline containing composition is encapsulated by hydrogenated vegetable oil and beeswax. In addition, dicalcium phosphate is added to the composition. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

4. Claims 1-11, 40-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Blagdon et al., (US Patent 5496571).

See col 3., lines 1-2, 64-67, col 4., lines 1-17, col 10, lines 1-10, claims.

The encapsulated choline composition contains vegetable oils and waxes and is mixed in with typical rations. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of

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the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

5. Claims 1-11, 40-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kitamura et al. (US Patent 5676966).

See col 3, lines 42-60, col 4, lines 5-10, and example 1. Kitamura et al teach at col 3 line 15, choline chloride and encapsulating this with vegetable oil and wax (see col 3, lines 45-55). The patent teaches surface-active agents that are added to the composition (see col 4, lines 5-17), and chitosan as a stabilizer. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is

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being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product, which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

6. Claims 1-13, 15-20, 40-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Iijima et al. (US Patent 4948589).

The claims teach coating choline compounds with a film of hydrogenated vegetable oil and wax. The composition includes dibasic calcium phosphate as a solubility modifier. See cols 3 and 4. Iron compounds may also be included in the composition. See col 4 lines 15-17. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the

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applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

7. Claims 1-13, 15-20, 40-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Nishimura et al.* (US Patent 5635198).

Nishimura et al teach an encapsulated choline choride (col 5, line 66) with vegetable oil and wax, (col 6) and chitosan (col 7, line 42). See also col. 6, col. 9, claim 1, and examples 13 and 14. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

8. Claims 1-13, 15-20, 40-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nishimura et al. (US Patent 5571527).

Nishimura et al teach an encapsulated choline choride (col 5, line 67) with vegetable oil and wax, (col 6) and chitosan (col 7, line 29). Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

9. Claims 1-13, 15-20, 40-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ando et al. (US Patent 4713245).

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Ando et al teach encapsulating choline chloride or lysine hydrochloride (col 3 lines 42-51) using vegetable fats having a melting point of 40 °C or higher and waxes having a melting point of 40 °C or higher to be used as a feed additive (col 4. lines 45-55). See also col. 3, lines 42-51, col. 4, lines 48-50. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

10. Claims 1-13, 15-20, 40-58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ueda et al. (US Patent 5227166).

Ueda et al show coating lysine hydrocholid with vegetable oils and waxes at col 3 lines 40, and col 4 lines 5-25. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by

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virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

11. Claims 1-20, 40-59 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ueda et al. (US Patent 5429832).

The patent teaches coating lysine hydrochloride and choline chloride with vegetable oils and beeswax and the composition contains chitosan (col 5, lines 15-20). See the claims. At col 5, line 29 teaches compounds claimed herein as surfactants. Claims 3-5, 15-20, 41-43, 52-56 recite limitations that are either inherent or would have been obvious to the one of ordinary skill in the art by virtue of the reference using similar materials and methods of making the composition, absent any evidence to the contrary. In any event, since the office is not equipped to make and compare prior art products, the burden is being shifted to applicant to show that the prior art products do not contain

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such limitations. When an examiner obtains a product which reasonably appears to fall within the scope of that which is claimed by a patent applicant, it is reasonable to shift the burden to the applicant to provide evidence showing that the product of the prior art does not fall within the scope of applicants' claims. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.


C. SAYALA
Primary Examiner
Group 1700.